

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CAROLYN MARIE WAY,

Petitioner,

-vs-

FREDERIC LATIMER WAY,

Respondent.

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: Civil No. 3:02cv903 (PCD)

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RULING ON MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE

Petitioner moves for a temporary restraining order, *ex parte*, having filed a Verified Emergency Motion for Issuance of Order that Respondent and Child Not Be Permitted to Leave the Jurisdiction of This Court pursuant to § 7(b) of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89, and 42 U.S.C. § 11604.

On June 10, 2002, this Court issued an order to show cause as to why petitioner's petition for return of child Brewster John Way should not be granted. A hearing on the petition is set for July 1, 2002 at 10:00 a.m. On June 12, 2002, petitioner filed the present motion alleging that respondent contacted her by telephone and indicated that she would not be permitted to speak to her son again and that she would have a difficult time finding respondent or her son again if she did not withdraw the petition.

Section 11604(a) provides that "any court exercising jurisdiction of an action . . . may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition." In order to prevent the child's removal, the motion is reviewed under the standard for a

temporary restraining order set forth in FED. R. CIV. P. 65. Such an order is appropriate when (1) “it clearly appears from specific facts shown by affidavit . . . immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party . . . can be heard in opposition” and (2) “the applicant’s attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.” FED. R. CIV. P. 65(b); *see also LaRouche v. Kezer*, 20 F.3d 68, 74 (2d Cir. 1994) (temporary restraining order appropriate to prevent party from acting and maintain status quo).

From petitioner’s affidavit, there is evidence that respondent intends to remove the minor child from Connecticut and thwart lawful attempts to resolve the present action. The affidavit also indicates that respondent is aware of the scheduled hearing and is willing to take action in the absence of an order requiring him to remain in Connecticut. It is hereby

ORDERED, that respondent, Frederic Latimer Way, and the minor child, Brewster John Way, are prohibited from leaving the state of Connecticut prior to the scheduled July 1, 2002 hearing before this Court, at which time this Court will hear argument as to why a preliminary injunction should not issue and remain in effect throughout the pendency of the present action. It is further

ORDERED, that respondent, Frederic Latimer Way, appear before this Court on Monday, June 17, 2002, at 1:00 p.m., in Courtroom #1 at the United States District Court, 141 Church Street, New Haven, Connecticut, and show cause why said order should not remain in effect until the July 1, 2002 hearing. Failure to appear will be considered a manifestation of respondent’s consent to the order. It is further

ORDERED, that service by the United States Marshal of the Order to Show Cause on or before June 14, 2002, be deemed sufficient service.

SO ORDERED.

Dated at New Haven, Connecticut, June ____, 2002.

Peter C. Dorsey
United States District Judge